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COMMISSION ON HUMAN RIGHTS

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SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 February 1992, at 10 a.m.

Chairman: Mr. SOLT (Hungary)

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The meeting was called to order at 10.20 a.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (E/CN.4/1992/13-16, 17 and Add.1, 18 and Corr.1 and Add.1, 19/Rev.1, 20, 62 and 63; E/CN.4/1992/NGO/4 and 9; E/CN.4/1991/17, 20 and Add.1; E/CN.4/1991/NGO/22; E/CN.4/Sub.2/1991/9, 26, 28/Rev.1, 29 and 30 and Add.1-4; A/46/46, 618 and Corr.1, 703; A/RES/46/110)

1. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing the agenda item, said that the question of the human rights of all persons subjected to any form of detention or imprisonment ranged in its substance over a wide area of human rights concerns. The focus of the item was on fairness, equity and respect for human dignity in the relationship between the individual, on the one hand, and the law and mechanisms of the State for implementing the law, on the other. That was a constant theme through human history.

2. There was a wide range of specific issues before the Commission under the item and various reports would be presented for consideration. In addition, the general debate and, in particular, the information provided by non-governmental organizations would enable the Commission to review human rights in the administration of justice from a worldwide perspective. The Commission would be able to identify emerging problems and situations of violations which might need prompt attention to prevent them from becoming more serious. Respect for human rights in the administration of justice and such serious problems as torture, disappearances and arbitrary detention constituted one of the barometers of the general health of a society and, as such, merited close attention by the members of the Commission.

3. Respect for human rights in states of emergency had been of concern for a number of years and the Sub-Commission on Prevention of Discrimination and Protection of Minorities had sought to ensure that states of emergency which affected the enjoyment of human rights should be declared in accordance with international standards, and that those standards should be respected during the state of emergency itself. For example, international human rights law placed strict limits on the circumstances in which a state of emergency could be declared and also limited to the minimum any restrictions on the enjoyment of human rights. The Commission had before it the most recent information in that regard in the fourth annual report and a list of States which, since 1 January 1985, had proclaimed, extended or terminated a state of emergency, prepared by the Special Rapporteur, Mr. Despouy (E/CN.4/Sub.2/1991/28).

4. In his opening statement to the Commission, he had expressed his deep concern about the detention of United Nations staff members, an issue to which he had given his active attention for many years. Both the Commission and Sub-Commission had been considering the detention of staff members in recent years and the Commission had before it an updated report on the situation of staff members, experts and their families detained, imprisoned, missing or held in a country against their will, including those cases which had been successfully settled since the presentation of the last report.

5. For its part, the Sub-Commission had invited its Special Rapporteur, Ms. Bautista, to submit to it, at its next session, a final report on those issues which would include practical recommendations for measures to improve on a long-term basis the protection of personnel of the United Nations system and their families, as well as of experts and consultants.

6. Over the years, the Commission had come to realize how important freedom of expression was to the enjoyment of other human rights. It had begun considering that item in 1988 from the standpoint of the detention of persons by reason of their exercise of that right. At its current session, the Commission would have before it a report on the freedom of opinion and expression, the current problems of its realization and on measures necessary for its strengthening and promotion prepared by the Special Rapporteurs, Mr. Joinet and Mr. Türk (E/CN.4/Sub.2/1991/9). Their report studied in detail the measures necessary for the strengthening and promotion of the right to freedom of opinion and expression, including the concept of a democratic society, the relationship between the right to freedom of opinion and expression and the right to freedom of association and peaceful assembly, and the right to take part in government. The range of issues dealt with in that regard had considerably expanded since 1988, and the Commission might wish to consider whether those matters should not be taken up under another agenda item where a broader discussion could be possible.

7. Both the Commission and the Sub-Commission had been giving close attention to means of ensuring respect for the independence of the judiciary and the protection of practising lawyers. At its previous session the Commission had had before it a report on the issue prepared by Mr. Joinet (E/CN.4/Sub.2/1991/30 and Add.1-4). The Sub-Commission had endorsed the report's recommendations and requested Mr. Joinet to prepare for its next session a report bringing to its attention information on practices and measures which had served to strengthen or weaken the independence of the judiciary and the legal profession.

8. The elements necessary for a fair trial and the measures which should be taken to ensure a fair trial were of growing concern to the Commission and the Sub-Commission. In that regard, he drew attention to the report by the Sub-Commission's Special Rapporteurs, Mr. Chernichenko and Mr. Treat entitled "The right to a fair trial: current recognition and measures necessary for its strengthening" (E/CN.4/Sub.2/1991/29).

9. A major step towards the protection of the physical integrity of individuals all over the world had been taken by the Commission the previous year when it had established a Working Group on Arbitrary Detention. That procedure joined those protecting the individual from enforced disappearances,

summary or arbitrary executions and torture. The Working Group had held two sessions since its establishment. At those sessions, the Group had adopted its methods of work, a series of principles applicable in consideration of cases of alleged arbitrary arrest or detention submitted to it, and a questionnaire devised for the presentation of such cases to the Working Group in order to provide it with all details needed for their consideration. The Working Group had also transmitted 159 cases to 16 Governments and taken its first decisions regarding 70 cases on which replies from Governments had been received. In addition, it had identified some particular situations to be further considered at its next session scheduled for March 1992. The report of the Working Group (E/CN.4/1991/20) would be introduced by Mr. Joinet.

10. In 1985, the Commission had decided to establish a Working Group to examine questions relating to torture. The Special Rapporteur, Mr. Kooijmans, had presented each year since then a report to the Commission. As could be seen from his most recent report (E/CN.4/1992/17), the number of incidents and cases processed under that mechanism was on the increase, covering situations in 65 countries. The Special Rapporteur had again used the urgent action procedure in cases in which fear had been expressed that the persons concerned might be subjected to torture. During the period under review, a total of 64 urgent appeals concerning 287 individual cases had been sent. There had also been growing cooperation from Governments, which had provided replies on 30 per cent of the cases transmitted in 1991. The addendum to the report (E/CN.4/1992/17/Add.1) contained an account of the visit the Special Rapporteur had paid to Indonesia in November 1991. As in previous years, the report would be introduced by the Special Rapporteur.

11. The Commission also had before it a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted by Costa Rica. The purpose of the draft text was to establish a system of visits to places of detention as part of the Commission's efforts to prevent torture and ill-treatment of detainees. In 1991, Costa Rica had submitted a revised text to the Commission, which had decided to consider it at the current session in the light of the comments made by Governments.

12. In 1980, the Commission had established the Working Group on Enforced or Involuntary Disappearances, which represented the first thematic instrument set up to examine questions concerning particularly serious human rights violations. Since its establishment, the individual cases transmitted to the Working Group had amounted to 25,000 and the number of cases submitted each year for its consideration continued to increase. It was also important to point out that, during the past year alone, the Group had received some 17,000 individual cases and transmitted 4,800 new cases, of which 330 had been sent under the urgent action procedure.

13. In 1991, the Working Group had accepted an invitation to visit Sri Lanka, and the Commission had before it the report on that visit in the addendum to the report on the Group's activities (E/CN.4/1992/18/Add.1). The Working Group had examined the issue of disappearances in the context in which they had taken place, considering national legislation as well as institutions and practices which could have had an effect on the phenomenon of disappearances in Sri Lanka. Mr. Tosevski, Chairman of the Working Group, would introduce that report in person.

14. As a result of the reports of the Working Group and the remarkable activities of many non-governmental organizations, the international community had realized that enforced or involuntary disappearances constituted extremely serious violations of human rights which threatened not only the victims but also society as a whole. The proposal had been made on a number of occasions that the international community should take the necessary steps to prevent disappearances and establish various degrees of responsibility by adopting a draft declaration.

15. In 1991, following an in-depth examination, the Sub-Commission had submitted for the consideration of the Commission a draft declaration on disappearances and a Working Group to revise the text of that draft declaration had been established within the Commission. In December 1991, the Working Group in question had held a meeting and Mrs. le Fraper du Hellen, Chairman-Rapporteur, would introduce its report (E/CN.4/1992/19).

16. In 1984, the General Assembly had adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which 64 States parties had so far acceded. The Commission had before it the report on the status of the Convention (E/CN.4/1992/15).

17. To date, the Committee against Torture had held seven sessions; in 1991, in the course of its two most recent sessions, the Committee had examined the initial reports submitted by eight States parties as well as additional reports transmitted by three other States. The Committee had also examined various ways of participating in the Preparatory Committee for the World Conference on Human Rights and had taken steps to increase its cooperation with the United Nations Voluntary Fund for Victims of Torture. The Committee had adopted some general principles concerning the form and the content of the periodic reports which States parties would have to submit. Lastly, it had continued its fruitful collaboration with the Special Rapporteur on questions relevant to torture.

18. The Secretariat received daily reports that torture had been practised or was being practised in various countries on all the continents and that there was a constant increase in the number of victims requiring assistance to cope with the effects of torture on their bodies or their minds; those painful consequences could last for years after the acts had been committed and require lengthy treatment. In December 1991, the General Assembly had itself expressed concern at the fact that the practice of torture and other cruel, inhuman or degrading treatment continued to be widespread.

19. It was for that reason that, in 1981, the Assembly had established the United Nations Voluntary Fund for Victims of Torture to make it possible, through the voluntary contributions of Governments, non-governmental organizations and individuals, to provide to the organizations specializing in the treatment of victims of torture the assistance which was required. The Commission, by its resolution 1991/36, had appealed to Governments, organizations and individuals to respond favourably to requests for contributions to the Fund, if possible on a regular basis, and had asked the Secretary-General to keep it informed of the operations of the Fund. In connection with that agenda item, the Commission had before it the reports of the Secretary-General to the General Assembly (A/46/618) and to the Commission (E/CN.4/1992/16).

20. Since the publication of the report to the Commission, France had made its eleventh annual contribution to the Fund, amounting to $US 55,555, while, on 30 January 1992, the United Kingdom had pledged a fifth voluntary contribution to the Fund of £25,000, and, on 7 February 1992, the United States had contributed a sum of $US 388,000.

21. Mr. JOINET (Chairman/Rapporteur of the Working Group on Arbitrary Detention), introducing the report of the Group (E/CN.4/1992/20), recalled that the Commission had established the Group at its forty-seventh session. The Working Group was made up of five members, including a Chairman and Vice-Chairman, and had held two sessions in September and December. In view of the very recent establishment of the Working Group and the fact that it had held its first session in September 1991 only, its report should be regarded as a preliminary one confined to indicating its views on its mandate, its working methods, the standards applicable in the consideration of cases and its initial activities.

22. As for its mandate, the Working Group took the view that, while its task was similar to that of the other working groups or special rapporteurs, it also included a number of specific characteristics. First of all, in the case of the existing special procedures, the protection applied to rights which could not be derogated from, in that enforced or involuntary disappearances or torture were violations of human rights that were prohibited in all circumstances. Detention, however, implied a restriction on freedom of movement, a limitation which was accepted and of which only the abuse was prohibited. The problem for the Working Group was therefore one of verifying not the existence of detention, but whether it was legal or not. Secondly, it was the duty of the Working Group not only to obtain information about a given situation, but also to investigate the cases of detention. Thirdly, the Working Group had the task of examining the manner in which national legislation was applied and, where appropriate, of ensuring its conformity with accepted international instruments.

23. With regard to the Group's methods of work, when a communication was received through the Centre for Human Rights, the latter sent a questionnaire to the source for the purpose of checking the seriousness of the communication. The communication was then sent to the Government concerned through its Permanent Representative to the United Nations at Geneva. If there was no response from the Government within 90 days, the Working Group could take a decision on the basis of all the information in its possession. If the reply was received within that period, the Working Group then transmitted the response to the source for its final comments.

24. The Working Group was then in a position to take a decision based on a number of criteria: if the person had been released, the case was closed; if the Working Group considered that the detention was not arbitrary in nature, the case was also closed; if the Working Group considered that it had insufficient information, the case remained under study; but if the arbitrary nature of the detention was established, the Working Group sent its recommendations to the Governments concerned and reported to the Commission at its next session. It should also be noted that the Group had established an urgent action procedure.

25. With regard to the evaluation of standards, he said that, for a communication to be admissible, the Working Group considered that the allegations should fall into one of the following three categories: cases in which it was manifestly impossible to link the detention to any legal basis; cases involving detention resulting from the exercise of rights protected by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; and cases in which the non-observance of standards relating to the right to a fair trial was such that it conferred an arbitrary character on the detention.

26. In addition to the Declaration and the Covenant, which it mentioned explicitly, resolution 1991/42 also referred to the relevant international standards set forth in the relevant international legal instruments accepted by the States concerned. Consequently, the Working Group was using as a relevant standard the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

27. With regard to the first initiatives of the Working Group, 24 Governments had been requested to provide information, and 8 had already submitted replies, which had usually been constructive. Those replies had been transmitted to the sources of information. In one case, the Permanent Representative of the country concerned had been heard.

28. When examining cases that had already been referred to it, the Working Group had decided to postpone certain situations for subsequent consideration in order to determine whether or not they fell within its mandate. The situations in question were described in paragraph 23 of the report.

29. Mr. KOOIJMANS (Special Rapporteur on questions relevant to torture), introducing his report (E/CN.4/1992/17 and Add.1), said that, in spite of the fact that the winds of change were blowing all over the world and promising democratization processes had set in in a number of countries, torture remained a disturbingly common phenomenon. There were still too many States where the structure of society and the legal and institutional framework were not strong enough to form a bulwark against the occurrence of torture. Therefore, he had stressed in chapter 5 of the report the important role which the judiciary could and should play in combating torture.

30. All too often, torture was regarded as an act which concerned mainly the executive branch of the Government. Important though the role of the Executive was, the role of the other branches of Government in the eradication of torture was no less important. Parliaments could use their power of control and supervision to persuade the Executive strictly to comply with the absolute ban on torture and should make use of their legislative powers to bring national legislation into line with international standards.

31. However, of even greater importance was the role of the judiciary, since it could provide immediate relief in various ways and redress in individual cases. If the judiciary assumed that responsibility, it would make the use of torture unrewarding and thereby contribute effectively to its disappearance. Under certain circumstances, it might be difficult for members of the judiciary to adhere to the oath they had sworn to apply the rule of law. For

that reason, each and every member of the judiciary should be supported by the whole of the judicial profession if he was victimized by the authorities on account of a decision which displeased them.

32. If the judiciary as a whole recognized that the principle of independence required it to ensure that the rights of parties were respected, such regrettable incidents simply could not happen. Since the use of torture was explicitly forbidden in all national legislation, no member of the judiciary could use his legally prescribed passive role as a shield once he had come to the conclusion that torture had been practised. In carrying out its proper function, the judiciary could play an inestimable role, even more in the prevention of torture than in its suppression.

33. Another preventive measure of great importance was currently under consideration in the Commission, namely the establishment of a system of periodic visits to places of detention by independent experts. The Commission was currently in a position to avail itself of the experience of a similar system established within the context of the Council of Europe. Since his report had been completed, the Government of the United Kingdom had followed the examples of those of Austria and Denmark in deciding to make public the Committee's report on the visits paid to its establishments. It might well take some years before agreement could be reached on a protocol to the Convention, by which time abundant material would be available about the European Committee's work, and the drafting process should not be deferred in the meantime. The intention behind the draft was not to provide for a formal procedure or draw up an indictment, but to ensure that Governments could engage in a constructive dialogue with an international body. Reports on visits would be confidential, unless Governments themselves agreed to their publication.

34. He had taken note with great interest of the report of the Working Group on Arbitrary Detention (E/CN.4/1992/20) which mentioned that the Working Group had established an urgent action procedure to be used if there were credible allegations that a person had been arbitrarily detained and that the continuation of that detention might entail serious danger for his health or life. Since such a procedure might well lead to an overlap with the urgent appeals sent under his own mandate, he welcomed the Working Group's willingness to coordinate its work with other international mechanisms.

35. A recent general recommendation of the Committee on the Elimination of Discrimination Against Women had stated that gender-based violence which impaired or nullified enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions constituted discrimination within the meaning of article 1 of the specific Convention. Since it was clear that rape or other forms of sexual assault against women held in detention were a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, they accordingly constituted an act of torture. In a number of cases he had brought allegations regarding such acts to the attention of the Government concerned. He intended to make contacts with the Committee on the Elimination of Discrimination Against Women for an exchange of information in order to combat that practice more effectively.

36. He was grateful to the Government of Indonesia for its invitation to visit that country. Reports on such visits inevitably contained critical remarks and he hoped that they would be seen by Governments as a genuine effort to help them to combat the phenomenon of torture and that the recommendations made would be acted upon.

37. In that context, he was pleased to inform the Commission that the Government of Guatemala had furnished a document containing a list of measures it had taken to improve the human rights situation in that country, some of which were based on the recommendations he had made in his 1990 report on his visit to Guatemala. The contents of that document would be reflected in his next report.

38. It was unfortunate that, due to a delay in communications, it had been impossible for him to visit Djibouti at the invitation of the Government of that country for an on-the-spot investigation of a number of allegations he had brought to the Government's attention. Since his mandate would expire at the end of the Commission's current session, new arrangements could be made only when the mandate had been extended.

39. Allegations could be transmitted to Governments only if the information provided was sufficiently precise and detailed, a condition which was frequently unfulfilled. Standard forms had recently been prepared for communicating all the relevant data required for handling a communication, and they would certainly contribute to the effectiveness of the Commission's mechanisms.

40. Since the finalization of his report, urgent appeals have been sent to the following countries: two to Cameroon, one to China, one to Egypt, two to Haiti, one to India, one to Sudan and two to Syria. He had also, since finalizing the report, received replies from the Governments of the following countries: Egypt, Greece, Spain, Sudan (two replies) and Turkey (four replies). The contents of those replies would also be reflected in the next report.

41. To conclude, he wished to express his sincere regret that, as a result of an unfortunate oversight, the impression was given in paragraph 235 of the report that the Government of Tunisia had not reacted to all the allegations transmitted to it. In fact, that Government had provided information on all cases brought to its attention. Since it was not possible to publish a corrigendum to the report before the end of the current session of the Commission, the contents of those replies would be reflected in the 1993 report.

42. Mr. TOSEVSKI (Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances) said that the activities of the Working Group had become known to an increasing number of organizations, throughout the world, which were addressing their communications to it. Its report (E/CN.4/1992/18 and Corr.1 and Add.1) contained a list of organizations which had contacted the Working Group for the first time in the past two years. As a consequence of that wider awareness, the Working Group had recently received an unprecedented number of cases. It had transmitted almost 5,000 new cases, but still had a backlog of approximately 14,000 cases which it had been unable to transmit owing to its limited resources.

43. The report illustrated the implementation by the Working Group of various resolutions of the Commission, including resolutions 1991/70 and 1991/31. Close follow-up of the progress made by Governments in their investigations had been made possible by the computerized database built up by the Working Group during the 12 years of its existence.

44. In addition, the Working Group had dealt with the question of disappearances at a general level, trying to establish why they occurred, how they could be prevented and how they could be eliminated. It had also considered that question in relation to individual countries, and had accordingly developed active cooperation with all the Governments concerned. It was to be noted that the willingness of those Governments to respond to the Working Group's requests for information had increased year by year, and some Governments had invited the Working Group to visit their countries, thus enabling it to obtain first-hand information. In October 1991, for example, three members of the Working Group had visited Sri Lanka, where they had received full cooperation from the authorities and from numerous organizations and private individuals. The report on the visit was before the Commission (E/CN.4/1992/18/Add.1).

45. The improved cooperation extended by Governments was demonstrated not only by the more numerous replies on individual cases, but also by the replies received from Governments of countries that had received the Group in previous years, all of which had informed the Working Group about the implementation of its recommendations. It was encouraging to note that, in the Philippines, a recommendation made by the Working Group concerning the need to strengthen the supremacy of the civilian courts over the military courts had been implemented by repealing certain Presidential Decrees and that its recommendation on the release from custody of detainees had been regulated by an agreement between the Philippine Commission on Human Rights and the Department of National Defence, thus ensuring that such releases were carried out properly and preventing the occurrence of disappearances.

46. The Government of Peru had also implemented one of the Working Group's recommendations by enacting a decree which authorized access to military installations and police detention centres by officials of the Office of the Attorney-General in all emergency areas throughout the country, to verify the situation of persons who had been detained or reported missing.

47. The Government of Colombia had reported that the new Constitution, which came into force in July 1991, gave special attention to the principle of due process, introduced the remedies of habeas corpus and fundamental rights and reinforced the investigative powers of the Office of the Attorney-General. Colombia had also made particular efforts to dismantle the so-called paramilitary groups operating within its territory, as recommended by the Working Group.

48. Positive developments had also taken place in Argentina, Chile and Honduras, where the number of disappearances had been considerable in the past, and where the practice had since ceased. Other countries had applied measures to diminish the practice, raising hopes that it would be eliminated. Institutions such as the National Human Rights Commission, established by the

Government of Mexico, constituted an effective tool and indicated that the Mexican Government was seriously engaged in preventing impunity in cases of violations of human rights.

49. Important information and statements had been sent by a number of Governments after the completion of the Working Group's report. They included information from the Government of Brazil that the exhumation and examination by forensic experts of corpses found in unmarked graves in the cemetery of Perus had led to the clarification of two cases of disappearance among those transmitted to the Government by the Working Group, and that more cases would be elucidated through the gradual disclosure of the records of former security services.

50. Additional information had also been received from the Government of Colombia in relation to measures taken by that Government to implement the Working Group's recommendations following its visit to Colombia, and from the Government of India providing a reply to allegations by non-governmental organizations. The Indian Government had stressed its deep commitment to democracy and the rule of law and had outlined its efforts to investigate cases of disappearance, giving an assurance that cooperation with the Working Group would continue. A letter had also been received from the Government of the Islamic Republic of Iran supporting the Working Group's efforts and containing an assurance that Iran would assist the United Nations organs in resolving cases of disappearance.

51. In conclusion, he wished to draw attention to a change in the format of the report. The Working Group had decided to include South Africa as a sub-chapter among the other country sub-chapters, rather than as a separate chapter as in previous reports, and to eliminate the mention of Namibia from the title. That decision had been taken in view of the independence of Namibia and the fact that the reports received on cases which had occurred within Namibian territory indicated that South African officials had been responsible for the disappearances, since they had occurred before independence.

52. Mrs. le FRAPER du HELLEN (Chairman-Rapporteur of the Working Group on the Declaration on the protection of all persons from enforced disappearance) said that Economic and Social Council resolution 1991/27 had authorized the Working Group to meet for two weeks prior to the forty-eighth session of the Commission. The Group had accordingly met in October and November 1991 to consider the draft Declaration in greater depth and to transmit a final text to the Commission with a view to its adoption. The Working Group's report was contained in document E/CN.4/1991/19/Rev.1.

53. Paying tribute to the spirit of cooperation that had prevailed in the Working Group in its efforts to achieve a consensus on a text, she said that all the participants, despite widely varying legal approaches and experience, had shown themselves aware of the urgency of their task. That urgency reflected the tragic continuance of the phenomenon of enforced or involuntary disappearances and the concern that the United Nations should be able, for the first time, to affirm in a solemn Declaration, the seriousness of the problem.

54. The first part of the report outlined the organization of work and the difficulties encountered by its members regarding certain provisions of the proposed Declaration. Those difficulties had, however, been approached constructively in the discussion of the text. In the second part of the document, the annex, which contained the actual provisions of the draft Declaration, particular attention had been paid to ensuring that those responsible for such grave violations of human rights did not go unpunished, and that the rights of the families and children of persons who had disappeared were properly taken into account. Due attention had been paid to the existing relevant international instruments. The resulting text drew added weight from the difficulties surmounted in the course of its preparation.

55. Mr. NZEYIMANA (Burundi) said that, in every country, respect for the human rights of detained or imprisoned persons was a yardstick by which the enjoyment of civil and political rights could be measured. Inhuman or degrading treatment of detained persons was a denial of their fundamental human rights. Such rights, however, must be exercised in conditions that were prescribed by the law and compatible with public order and national security.

56. Many countries faced the challenge of reconciling respect for human rights with the maintenance of public order and stability. Indeed, human rights could not be guaranteed by a State which was unable to maintain public order. It was for the legal and institutional system of the country concerned, to determine to what extent the exercise of individual rights and freedoms was compatible with national security and public order but the criteria for such determination must be consistent with the principles set forth in the Universal Declaration of Human Rights.

57. An interesting example of that dilemma had occurred in his country in July 1991 when, following an unauthorized strike and public demonstration during which considerable damage had been done to private property, his Government had been urged to suppress the demonstration by force. Instead, the Government had listened to human rights groups and had charged only those persons identified as having damaged private property, without punishing persons for exercising the right to demonstrate, even if there had been no authorization. Moreover, the Government had shortly afterwards brought its national legislation on public demonstrations into line with the provisions of the Universal Declaration. That experience showed that the current Government of Burundi had made considerable progress in promoting freedom of opinion in its various forms. Indeed, since 1987, hardly anyone had been detained for offences of opinion.

58. The period of political pluralism that was currently dawning in Burundi could lead, however, to situations of conflict between the Government and citizens over the exercise of political rights, but his Government hoped to handle that difficult phase of democracy with wisdom, maturity and responsibility.

59. On the subject of pre-trial detention, there was a regrettable tendency on the part of low-level judicial police officers in Burundi to hold persons in custody for excessively long periods. While it was true that abuses in that area were the result of outdated colonial legislation and the shortage of examining magistrates, the Government was preparing stricter legislation on

the applicability and duration of pre-trial detention. Training courses for police officers in the field of human rights had also been organized during 1991 with the particular intention of encouraging the use of more scientific methods than physical violence when interrogating arrested persons. While torture, as such, was rare in Burindi, instances of police brutality were all too common.

60. The human rights situation of detained or imprisoned persons in Burundi was generally favourable. As in many other developing countries, an improvement in the situation would depend on the increased availability of material resources. In view of the current political upheaval on the continent as a whole, the general situation in Africa was rather more complex. Genuine democratic Governments must show maturity, actors on the political scene must show responsibility, and opposition forces must adopt an appropriate role.

61. Mr. BODDENS-HOSANG (Netherlands) said that the recommendations on the subject of detention and executions, as formulated by the Working Group on Enforced or Involuntary Disappearances and other thematic mechanisms over the previous decade, could be divided into three categories: standard-setting, prevention and monitoring of implementation, and post-violation action, the safety of relatives and human rights defenders, and the responsibility of Governments.

62. As far as standard-setting was concerned, the Working Group had stressed the importance of the ratification of human rights treaties, the setting of new standards and compliance with existing codes. It had also made several proposals for new rules, such as declaring incommunicado detention to be illegal, since many alleged cases of torture took place during such detention. The Special Rapporteur on summary or arbitrary executions had mentioned the need to develop international standards aimed at ensuring that all suspicious deaths were investigated, particularly those at the hands of law enforcement agencies. Death in all types of custody should be regarded, prima facie as a summary or arbitrary execution. The Special Rapporteur had also stated that further standard-setting work was needed to clarify the conduct of law enforcement agencies during events such as demonstrations and riots, to define the powers of arrest, and to establish safeguards against the use of torture to obtain statements. In the field of standard-setting also, his delegation welcomed the draft declaration on the protection of all persons from enforced disappearance, which contained an international legal definition of enforced or involuntary disappearance.

63. The thematic reports considered the monitoring of the implementation of standards and of prevention policies to be the task of various bodies, including Governments, independent committees and the Commission on Human Rights. In his report, the Special Rapporteur on questions relevant to Torture focused on practical measures to monitor the treatment of detainees. Arguing that incommunicado detention was conducive to torture, he had proposed that the monitoring of detainees should be improved by rules that interrogation should take place only at official interrogation centres, that all interrogation sessions should be recorded, and that the identity of all those present should be revealed in the records. Moreover, evidence obtained from the detainee elsewhere and not confirmed during interrogation at an

official centre should not be admitted as evidence in court. The Special Rapporteur had also stressed the right of an arrested person to have prompt access to legal counsel and to have his or her relatives informed.

64. The recommendations addressed the question of training, education and publicity as being crucial for creating awareness of human rights norms and establishing the right climate for the prevention of abuses. Such training, however, could only have medium- and long-term effects and could not be considered as a substitute for concrete short-term action to clarify pending cases of disappearance.

65. As for the third category of recommendations - post-violation action, the safety of relatives and human rights defenders, and the responsibility of Governments - the only after-care possible for the victims of certain human rights abuses was making the causes of death publicly known. Victims should be entitled to file a complaint about torture or maltreatment with an independent authority and to be compensated.

66. Relatives of victims of human rights abuses and those who devoted themselves to the cause of human rights were often themselves in danger and should therefore be well protected. The Working Group on Enforced or Involuntary Disappearances had, accordingly, requested the Commission to condemn the practice of violating the rights of relatives of missing persons. Evidence had shown the devastating impact of fear on the victim, on the family, and on society, where such fear prevented the action needed to bring disappearances to an end.

67. The Working Group on Enforced or Involuntary Disappearances had concluded that impunity was a major contributing factor to the phenomenon of disappearances and that military courts contributed significantly to impunity. His delegation shared the view of the Special Rapporteur on questions relevant to torture that there should be no room for impunity and that, whenever a person was found to be responsible for acts of torture or severe maltreatment he should be brought to trial and, if found guilty, severely punished.

68. Turning to the question of the responsibility of Governments, he noted that violations of human rights were not limited to certain political or social systems. Indeed, no State was wholly immune from torture, since torture could occur anywhere in which a man had complete power over his fellow. Nevertheless, certain situations were clearly conducive to human rights violations. Governments should therefore seek to promote human rights and freedoms and regulate situations where human beings exercised power over other human beings.

69. Since Governments had the ultimate responsibility for what happened within a country's borders, they were primarily responsible not only for their own policies but also for the introduction of such practices as enforced disappearances into society as a whole. It was precisely because of that responsibility of Governments that it was necessary to draw the Commission's attention once again to the important recommendations of the thematic mechanisms and to the need to cooperate fully with those mechanisms.

70. Mr. OYARCE (Chile) said he regretted the fact that the report of the Special Rapporteur on questions relevant to torture had failed to mention the views expressed by the Committee against Torture on Chile, a country which had just recovered its freedom. The Committee had praised the Government of Chile for its efforts to observe the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and had taken note of the country's remarkable progress in promoting respect for human rights and the steps it had taken to ensure that torture no longer constituted a moral, legal or political problem.

71. On the question of arbitrary detention, the criteria used by the Working Group on the subject to determine the admissibility of cases were based on principles which would serve as a guide both for those lodging complaints and for the Governments concerned. Resolution 1991/42 gave the Working Group the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the standards established in the relevant international instruments. In view of the nature of the mandate contained in the resolution, the exhaustion of all domestic recourses was not a condition for the admissibility of a complaint and, accordingly, the Working Group was empowered to proceed promptly with the investigation of the cases submitted to it.

72. The Working Group had also given consideration to the international standards to be used in determining whether a detention was arbitrary or not. Those standards were clearly set forth in resolution 1991/42, which made reference to the Universal Declaration of Human Rights and relevant international standards set forth in other international instruments accepted by the States concerned.

73. Where there was incompatibility between domestic legislation and the provisions of the Universal Declaration, the Working Group was required to adhere to the relevant international standards. Failure to do so would be to create a situation in which domestic legislation could nullify the most cherished precepts developed by the community of nations to protect the rights of individuals. Nevertheless, the principles elaborated by the Working Group could not be used to apply to a State instruments which it had not ratified.

74. With reference to the complaints concerning three cases of arbitrary detention in Chile, contained in the report of the Working Group, he wished to state that one of the three individuals had been released by a decision of the President of the Republic. The other two cases, however, had originated in trials commenced during the military dictatorship and which, despite the new legislation enacted by the President of the Republic to accelerate such proceedings, had still not been completed. While his Government shared the concern of the Working Group, the President of the Republic was not empowered to release persons who were detained by judicial order and whose trial was still incomplete.

75. The phenomenon of enforced or involuntary disappearances was one that struck at the very heart and conscience of society. In Chile, the pain of that experience had been a determining factor in the priority which the Government attached to the approval of the draft declaration on enforced or involuntary disappearances. Chile understood the draft declaration as a homage to the thousands of persons who had disappeared and to the

non-governmental organizations, particularly those in Latin America, which had laboured tirelessly to give a voice and a message to the victims. While parts of the text might be subject to different legal interpretations, the document was clearly an ethical and political one, which complemented the Universal Declaration of Human Rights and which no court could disregard.

76. The draft declaration considered the systematic practice of enforced disappearance to be a violation of international law and that led to the application of the principle of international jurisdiction. It also established the principle that victims and their families had a right to redress and to adequate compensation. His Government agreed that an act of enforced disappearance should be considered a continuing offence as long as the facts concerning the disappearance of the victim remained unclarified.

77. In conclusion, his delegation hoped that the Commission would recommend the adoption of the draft declaration.

78. Mr. PINTER (Czech and Slovak Federal Republic) said that torture was one of the worst kinds of human rights violations, and the Commission must do its utmost to fight against it and all its manifestations wherever they occurred.

79. His delegation welcomed the finalization by the Working Group of the draft declaration on the protection of all persons from enforced disappearances. It was to be hoped that that draft declaration would be approved by the Commission and adopted by the General Assembly, so that it could make an effective contribution to the protection of persons throughout the world from such abuses.

80. His Government welcomed the report of the Special Rapporteur on questions relevant to torture (E/CN.4/1991/17) and supported its recommendation that States which had not yet done so should ratify as soon as possible the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It was important to ensure not only ratification but also implementation of the Convention, which the Czech and Slovak Federal Republic had signed on 8 September 1986 and ratified on 7 July 1988. In November 1991, the Committee against Torture had considered the initial report of his country and his Government would do its utmost to comply with the Committee's recommendations.

81. The draft optional protocol to the Convention against Torture would represent a major step forward in preventing that abuse. The idea of visits to places of detention as a means of providing better protection against the torture of persons deprived of their liberty was in keeping with the growing preventive role of the United Nations in ensuring respect for human rights. It was to be hoped that the Commission would conclude its consideration of the draft optional protocol at its current session.

82. Mr. PALACIOS SERRANO (Observer for Spain) said that, despite the Convention against Torture, monitoring machinery and an international Code of Conduct for Law Enforcement Officials, the practice of torture continued to be a universal phenomenon. Spain had adhered to the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, in the framework of the Council of Europe. It had ratified the Convention against

Torture and recognized the competence of the Committee provided for in article 22 of that instrument to receive and consider communications from individuals.

83. The judiciary constituted the last bastion for the effective protection of human rights and, consequently, for the prevention of torture, and it must remain independent if the full enjoyment of human rights was to be ensured.

84. At the national level, the responsibility for eliminating that practice must be borne by all, from government authorities to the individual. It was essential to investigate even the slightest evidence that torture was being used, to denounce and punish the guilty parties, to educate the segments of society most likely to resort to violence and to help, rehabilitate and compensate the victims of such abuses.

85. His delegation commended Mr. Chernichenko and Mr. Treat for their report on the right to a fair trial: current recognition and measures necessary for its strengthening (E/CN.4/Sub.2/1991/29). The material it contained constituted an important step forward that might serve as a guideline for the administration of justice.

86. His Government welcomed the report of the Working Group on Arbitrary Detention (E/CN.4/1982/20) and supported its adoption of an urgent action procedure.

87. His Government hoped that the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was designed to establish a system of visits by a committee of experts to places of detention within the jurisdiction of the States parties to the protocol, could be approved at the current session of the Commission. It endorsed the draft declaration on the protection of all persons from enforced disappearances, commended the Working Group on Enforced or Involuntary Disappearances on its work and supported its working methods and investigations.

88. Mr. AKTAN (Observer for Turkey) said that many non-governmental organizations (NGOs) were biased in their reporting. They had a tendency to disregard the terrorist nature of the warfare being waged by what were often called "armed opposition groups" and even ignored the victims of terrorism. Such terrorist groups were even referred to as "political opposition groups", and those who supported the acts of murder committed by those groups were "political prisoners". Moreover, the NGOs frequently condemned the atrocities perpetrated by so-called "armed opposition groups" in a very perfunctory way, regarding them not as human rights violations but as violence that must be defused by Governments. Evidence of external material support for "armed opposition groups" was dismissed by the NGOs on the grounds of their political neutrality. The only remedy they proposed was the establishment and efficient administration of an independent and impartial judiciary, together with the strict respect for the rule of law in the countries concerned.

89. As a result, in countries where ethnic and ideological terrorist groups had been active, the human rights performance of the Governments concerned had been assessed by measuring the behaviour of the security forces and the

judiciary, while overlooking the savage terrorist violence directed against them and the population they were duty-bound to protect. That one-sided approach was tantamount to condoning terrorism and was therefore in breach of international law. Such an approach not only did not serve the cause of human rights but had even become a major obstacle to achieving improvement in that area.

90. Curiously enough, the reports of many NGOs often contained no mention at all of democracy, democratic rights or democratic institutions and processes. Likewise, the agenda of the Commission made no reference to democracy. Yet an independent and impartial judiciary could not survive outside the democratic framework. By placing special emphasis on ethnic rights or on respect for the rights of members of "armed opposition groups" and by ignoring the full democratic rights of the entire population or the majority thereof, the international community was encouraging the dismemberment of the States.

91. By taking sides with one party against the other, NGOs were not defending democracy, but were supporting ethnic and ideological violence. It must be understood that terrorism, by its very nature, could not serve lofty ideals. It was a mistake to think that terrorists who killed indiscriminately one day would the next day establish a democratic regime based on respect for human rights.

92. His delegation drew attention, in that context, to the preamble to the Universal Declaration of Human Rights, which stated that every individual and every organ of society must strive to promote respect for human rights. Clearly, that applied not only to States but to terrorists as well. The NGOs must therefore oppose and condemn terrorism and its supporters and must defend their victims.

93. Mr. BRODY (International Commission of Jurists), speaking on behalf of Amnesty International, the Latin American Federation of Associations of Relatives of Disappeared Detainees, the International Federation of Human Rights, the International League for Human Rights and the International Human Rights Law Group as well as his own organization, said that the draft declaration on the protection of persons from enforced or involuntary disappearances was long overdue. An instrument was urgently needed which set forth the mechanisms which States should put into place to prevent further disappearances from occurring.

94. The draft declaration fell short in several respects of the proposals put forward by the International Commission of Jurists and other non-governmental organizations, which would have preferred that the qualification of disappearances as a crime against humanity be more absolute and that article 14, which urged States to exercise universal jurisdiction over persons involved in disappearances be cast in more explicit language. Nevertheless, the current draft did set forth a realistic and constructive approach to that pervasive phenomenon.

95. The consensus solutions reached in the Working Group, while not entirely saitsfactory, set a high standard: disappearances were absolutely prohibited at all times; detainees must be held in officially recognized places of detention; relatives had the right to go to court to locate detainees; States

must thoroughly investigate complaints of alleged disappearances and protect relatives and witnesses who complained; disappearances were considered to be a continuing crime; and no special amnesty laws could exonerate perpetrators. Adoption of the draft declaration by the Commission and the General Assembly would thus be a milestone in the campaign against that terrible crime.

96. Continuing on behalf of the International Commission of Jurists alone, he said that his organization had strongly supported the initiative at the thirty-seventh session of the Commission to set up a working group to investigate cases of arbitrary detention throughout the world. The Working Group had rightly followed United Nations precedent in concluding that a detention was arbitrary if it was either on grounds or in accordance with procedures other than those established by law or under the provisions of a law the purpose of which was incompatible with international human rights.

97. It had also rightly determined that its mandate to investigate cases implied reaching some form of conclusion as to whether a particular detention was arbitrary or not. On one point, however, his organization disagreed. In its tentative methods of work, the Working Group stated, that if the person whose case had been submitted had been released, for whatever reason, the case was closed (E/CN.4/1992/20, para. 14 (a)). That decision, by preventing the Working Group from reaching conclusions on such cases, essentially prevented cases and even patterns of short-term arbitrary detention from coming before the Working Group. It was to be hoped that the Working Group would re-examine that unnecessarily narrow reading of its mandate.

98. Turning to draft resolution III submitted to the Commission by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/1992/2), which called on all States to establish and to maintain at all times a detainee's right to challenge the legality of his or her detention, that right, often known as habeas corpus, was critical to those deprived of their liberty and protected not only the personal freedom of a detainee but also often ensured that his or her life and physical integrity were respected.

99. Thousands of forced disappearances could have been avoided if the writ of habeas corpus had been effective and if judges had investigated the detention by going personally to the places of detention. Nevertheless, many States suspended that key right in times of emergency. His organization had found, in its 1983 study, that the principal factor implicated in abuse of detention powers was the suspension of the right to challenge the legality of detention in a court of law.

100. Under article 4 of the International Covenant on Civil and Political Rights, the right to challenge the legality of detention was not expressly made non-derogable. While it was doubtful whether derogation from that right was ever "strictly required by the exigencies of the situation" (art. 4, para. 1, of the Covenant), the weakness of international review mechanisms deprived that theoretical limitation of much of its practical force.

101. The Sub-Commission's proposal was consistent with the 1987 advisory opinion of the Inter-American Court of Human Rights, which had ruled that habeas corpus was not derogable under the Inter-American Convention, as it was

essential for the protection of the rights and freedoms whose suspension the Convention prohibited. His organization therefore urged the Commission to adopt the draft resolution on habeas corpus.

102. The report on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1991/30) made important recommendations concerning the advisory services programme and set forth in detail obstacles to the independence of judges and lawyers. The Commission had before it a draft resolution of the Sub-Commission authorizing a further report by Mr. Joinet on the subject (draft resolution VII), and his organization urged the Commission to adopt it.

103. The International Commission of Jurists supported the proposal by Costa Rica to create an inter-sessional working group to examine the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The meeting rose at 12.55 p.m.